Nos. 09-1454 and 09-1478

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Supreme Court of the United States

BOB CAMRETA,

Petitioner,

v.

SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor,

Respondent.

JAMES ALFORD,

Petitioner,

v.

SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor,

Respondent.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF ARIZONA, ALABAMA, ALASKA, ARKANSAS, CALIFORNIA, COLORADO, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA, WISCONSIN, AND WYOMING AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICI CURIAE STATES

Amici States share a compelling *parens patriae* interest in protecting children. *Santosky v. Kramer*, 455 U.S. 745, 766 (1982). In furtherance of that interest, many States have enacted statutes or adopted policies designed to encourage child welfare agencies and law enforcement departments to cooperate in investigating and prosecuting child abuse.

In this case, the Ninth Circuit held that because "law enforcement personnel and purposes" were involved in caseworker Bob Camreta and deputy sheriff James Alford's (Petitioners) warrantless in-school interview of S.G., an allegedly abused child, the interview violated the Fourth Amendment's guarantee against unreasonable searches and seizures.[1] *Greene v. Camreta*, 588 F.3d 1011, 1027 (9th Cir. 2009). The Ninth Circuit's decision will hamper States' ability to effectively and sensitively investigate child-abuse[2] allegations by preventing child protective services (CPS) workers and law enforcement from interviewing suspected abuse victims at school in the absence of a warrant, a court order,

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[1] Given that Petitioners "[did] not contest the district court's holding that the two-hour interview of S.G. at her school was a seizure," *Greene*, 588 F.3d 1011, 1022 (9th Cir. 2009), Amici address the Fourth Amendment seizure considerations without conceding that social worker or law enforcement personnel interviews of alleged child-abuse victims in the public school setting implicate Fourth Amendment interests.

[2] Except where otherwise apparent, the term "child abuse" refers here to child-maltreatment generally, including neglect.

parental consent, or exigent circumstances. Not allowing such interviews will undermine States' ability to protect vulnerable children from being sexually abused by parents or other members of the abused child's household.

SUMMARY OF THE ARGUMENT

In its ruling, the Ninth Circuit reiterated its earlier holding that "'the general law of search warrants applie[s] to child abuse investigations.'" *Greene*, 588 F.3d at 1030 (quoting *Calabretta v. Floyd*, 189 F.3d 808, 814 (9th Cir. 1999)). Finding that law enforcement purposes were too entangled in the investigation of the possible sexual abuse of S.G., the court held that "the decision to seize and interrogate S.G. in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional." *Id.* That approach overlooks that the participation of law enforcement in the joint interview of suspected child-abuse victims serves not merely law enforcement purposes, but also the victims' own interests in being afforded a safe and appropriate opportunity to disclose abuse away from the influence of a parental perpetrator or non-offending, but unsupportive, caregiver. It further overlooks the States' related and compelling interest in applying best practices for child-abuse investigations – of which child interviews are a keystone – to maximize their ability to reliably discover abuse where it occurs and minimize trauma to child victims.

To the detriment of the same children that it sought to protect, the Ninth Circuit's decision unnecessarily requires parental consent, a warrant, a court order, or exigent circumstances before CPS and law enforcement may cooperatively interview a suspected child-abuse victim. Realistically, imposing those requirements will cause many abused children to remain in harm's way because the Ninth Circuit's unnecessary and erroneous rule hampers States' abilities to protect children and prosecute abusers.

Because the Ninth Circuit relied on inaccurate and incomplete information about the realities of child-abuse investigations, it failed to strike the correct balance of the competing public and private interests at stake. First, in weighing parents' and children's interests in avoiding the intrusion of such investigations, the court incorrectly inflated the number of investigations that fail to result in the substantiation of maltreatment. Second, although millions of CPS child-abuse investigations are, in fact, unsubstantiated, the Ninth Circuit overlooked the many difficulties that attend intrafamilial child-abuse investigations and contribute to "unsubstantiated" outcomes even where maltreatment has occurred. Cooperative CPS and law enforcement investigations, and more particularly cooperative child interviews, have gained wide acceptance as the best practice because such interviews are the most effective tool available for overcoming the many obstacles to obtaining reliable investigative outcomes while simultaneously reducing system-induced trauma to

the child. Yet the Ninth Circuit's ruling here would further curtail the use of this critically important and common practice, leading to even larger numbers of incorrectly unsubstantiated investigative outcomes and protecting fewer children from abuse.

To understand the gravity of the States' interest – and, by extension, the reasonableness of the joint-interview practice absent a warrant, court order, parental consent, or exigent circumstances – one must understand the intrafamilial abuse dynamics that impede child-abuse investigations before any added layer of constitutional protections even comes into play. By their nature, CPS investigations typically involve situations in which the perpetrator is a parent or other family member, and often a member of the child's household. If, as the Ninth Circuit implies, CPS investigations are therefore to be seen as "storming the castle," *see Greene*, 588 F.3d at 1016, then one must also perceive the strength of the fortress walls behind which abused children await rescue.

Comprised of several interlocking monoliths that block the path to reliable detection of intrafamilial abuse, those walls shield abuse and abusers from discovery because: (1) frequently, there is no witness to the abuse other than the child-victim and no physical evidence; (2) the child often has a close relationship to the perpetrator and may even be dependent on him or her for basic care and necessities; (3) the nonoffending caregiver, if any, likewise often has an intimate or other close relationship to

the abuser, and these relationships may be further influenced by imbalances of financial, physical, or other forms of power that lead nonoffending caregivers to protect the perpetrator, rather than the child; and (4) child victims are inherently vulnerable and often reticent to disclose abuse, a phenomenon only compounded by their susceptibility to their abusers' efforts to prevent such disclosure.

The need to overcome these substantial barriers lends great weight to the States' already compelling interest in utilizing those investigative methods most likely to create an atmosphere in which children will disclose enough information about their abuse to enable the government to intervene and protect them. States have recognized that cooperation among agencies is the best means of advancing that interest while minimizing investigation-related trauma to victims of child abuse. Most States therefore employ some variation of multidisciplinary teams (MDTs) to investigate reports of intrafamilial child abuse. One goal of MDTs is to reduce the number of interviews to which a child is subjected, minimizing both the risk of suggestibility in the interviewing process and the traumatic effects of the child's retelling his or her tale of maltreatment to multiple interviewers. Importantly, MDTs' widespread use has not as a rule resulted in unreasonably intrusive investigative experiences for children and families who undergo child sexual-abuse investigations. Instead, a recent study revealed that most children and nonoffending caregivers reported feeling satisfied with their investigation experiences.

These successful strides in striking the right balance between the public and private interests at stake – achieved over decades by the cumulative efforts of experts in all aspects of child maltreatment – are directly threatened by the Ninth Circuit's decision here. Initial child-abuse reports are often hearsay statements that will not support the finding of probable cause necessary to obtain a warrant or court order. Accordingly, requiring investigators to obtain prior judicial authorization before interviewing alleged child-abuse victims would seriously impede their investigations. Coupling that with what is known about the reticence of many child-abuse victims to disclose abuse absent the use of child-sensitive investigative techniques, the expectation that probable cause could be obtained in an abbreviated encounter with the child defies the realities of intrafamilial child-abuse dynamics. Sexually abused children who do not disclose their abuse until adulthood establish that many children already go unprotected. Imposing a warrant requirement will only increase their ranks.

Requiring parental consent before interviewing a suspected victim will similarly sabotage the compelling state interests in protecting children and prosecuting perpetrators of child abuse. Abuse-related deaths comprise the leading cause of trauma death in young children, and research establishes that large numbers of, though not all, nonoffending caregivers will fail to protect their children even from known abuse. Consequently, any presumption that parents

of allegedly abused children, as a group, will consent to investigative interviews designed to elicit information sufficient to uncover child abuse is a dangerous fallacy. In no other context would a court countenance requiring a state agent to obtain a criminal suspect's advance consent to interview the alleged victim, especially when the victim is one who is particularly susceptible to the alleged perpetrator's influence or coercion. Yet the Ninth Circuit's ruling contemplates exactly that.

Requiring a demonstration that exigent circumstances justify interviewing a child at school in the absence of a warrant or parental consent presents similar problems. If exigencies become known to CPS, the child may be taken into a State's protective custody in proceedings to protect that child. Once the child is in the State's custody, investigative interviews may take place under that authority. That is a far greater intrusion into the family than simply interviewing the child. More importantly, children in cases where exigencies are known before the child is interviewed are not the children whose welfare the Ninth Circuit's ruling jeopardizes. Instead, it is those children whose circumstances are not sufficiently known and cannot be determined in the absence of an effective investigative interview.

By contrast, allowing States to effect in-school interviews of children is a reasonable alternative that satisfactorily balances the relative interests involved. Children are likely to be available during predictable and reasonable hours at school. More importantly,

school is a familiar setting to most children, and one likely to be away from both the location and the perpetrator of the suspected intrafamilial abuse.

Applying the reasonableness balancing test that this Court has applied in similar circumstances would adequately protect the relative interests at stake and lead to the conclusion that the interview, or "seizure," of S.G. conducted here was reasonable and did not run afoul of the Fourth Amendment. Accordingly, this Court should reverse that portion of the Ninth Circuit's judgment that holds that Petitioners violated the Fourth Amendment.

ARGUMENT

Requiring a Warrant, Court Order, Parental Consent, or Exigent Circumstances Before Interviewing a Suspected Child-Abuse Victim Is Not Reasonable Under the Fourth Amendment Because Such a Requirement Does Not Adequately Protect the Victim.

Petitioners have addressed the legal issues supporting their argument that the Ninth Circuit erred in holding that they violated the Fourth Amendment when they interviewed S.G. at her school without obtaining a warrant, court order, or parental consent, and in the absence of exigent circumstances. Thus, Amici States will focus on the difficulties involved in investigating child abuse; the need for MDTs to investigate child abuse; and the reasons that

requiring prior judicial authorization, parental consent, or exigent circumstances before allowing a child-abuse victim to be interviewed would seriously undermine the States' ability to detect and prevent child abuse and thereby harm the very victims whom the Ninth Circuit wanted to protect. The standard applied to determine whether interviews of suspected child-abuse victims comply with Fourth Amendment requirements should recognize the inherent differences in interviewing children who are victims of abuse versus those who are being investigated as suspects.

A. The Ninth Circuit Incorrectly Balanced the Competing Interests at Stake in Child-Abuse Investigations Because It Did Not Recognize that Many "Unsubstantiated" Child-Abuse Reports Result from the Inherent Difficulties of Substantiating Maltreatment and Not from False Reporting.

The Ninth Circuit identified the competing interests at issue in this case as society's "compelling interest in protecting its most vulnerable members from abuse within their home" on one hand, and parents' "exceedingly strong interest[s] in directing the upbringing of their children . . . [and] protecting both themselves and their children from the embarrassment and social stigmatization attached to child abuse investigations" on the other. *Greene*, 588 F.3d at 1015-16. The Ninth Circuit implied that parents'

interest in protecting themselves from potential negative consequences of CPS investigations is "exceedingly strong," in part, because "only about a quarter" of "the millions of investigations conducted by state and local agencies in 2007 . . . concluded that the children were indeed victims of abuse." *Id.* at 1015-16. The reader is left to draw the mistaken inference that roughly 75% of those investigations must have needlessly exposed parents and children to "embarrassment and social stigmatization" where the child-abuse allegations investigated were simply false. But the court's assumption is wrong because it inaccurately inflates the number of investigations and overlooks the difficulties inherent in investigating intrafamilial child abuse that can result in the failure to substantiate maltreatment.

The Ninth Circuit inaccurately states that in that same year, "state and local agencies investigated 3.2 million reports of child abuse or neglect." *Greene*, 588 F.3d at 1015 (citing the *Child Maltreatment Report for 2007* by the U.S. Department of Health and Human Services Administration for Children and Families).[3] The court's statement is inaccurate in two ways. First, it refers to 3.2 million "reports," when, in fact, the cited *Child Maltreatment Report* states that CPS agencies received 3.2 million "referrals." *Child Maltreatment Report for 2007*, *supra*, ch. 2. Second,

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[3] Accessible at http://www.acf.hhs.gov/programs/cb/pubs/cm07/chapter2.htm (viewed December 14, 2010) (hereinafter *Child Maltreatment Report for 2007*).

the *Greene* ruling states that all 3.2 million of these were "investigated," when, in fact, 38% of them were not. *Id.*

When CPS agencies receive a referral, a screening process determines whether the referral meets state criteria for investigation or assessment. *Id.* Only those referrals that meet those criteria become a "report" and reach the investigative or assessment stage. *Id.* As the *Child Maltreatment Report for 2007* plainly states, only 62% of the 3.2 million referrals received in fiscal year 2007 reached the report-and-investigation stage, meaning that 38% were "screened out." *Id.* Accordingly, the Ninth Circuit's statement that 3.2 million "reports" were "investigated," *Greene*, 588 F.3d at 1015, is incorrect. Well over one million of those referrals were never investigated at all. *Child Maltreatment Report for 2007*, *supra*, ch. 2.

With regard to the other 62% of referrals that were "screened in" for investigation or assessment in 2007, 61.3% were determined to be "unsubstantiated." *Child Maltreatment Report for 2007*, *supra*, ch. 2. An "unsubstantiated" report means "[a]n investigation disposition that determines that there was not sufficient evidence under State law to conclude or suspect that the child was maltreated or at risk of being maltreated." *Id.* A "substantiated" report denotes "[a]n investigation disposition that concludes that the allegation of maltreatment or risk of

maltreatment was supported or founded by State law or State policy." *Id.*

Although the *Child Maltreatment Report for 2007* categorically includes "unsubstantiated" dispositions among a class of investigations described as having "led to a finding that the children were not victims of maltreatment," *id.*, such findings do *not* necessarily mean that abuse did not occur or that the children were not at risk for maltreatment.[4] Certainly, a report might be unsubstantiated because abuse did not occur or no identifiable risk was present. However, because the absence of "sufficient evidence under State law" is the defining feature of an unsubstantiated report, barriers to obtaining "sufficient evidence" of child abuse to justify substantiation may also be responsible. Notably, "children whose cases are determined to be unsubstantiated and children whose cases are substantiated are equally likely to return to the system, regardless of how stringent the criteria used to define rereferral. This trend would not be

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[4] "Unfortunately, some authors, referring to the proportion of cases that are not substantiated, imply that an unsubstantiated case is the equivalent of a deliberate false allegation," and, "[b]ased upon this distortion, . . . have asserted that there is an overwhelming flood of false, maliciously made reports of child maltreatment." Kathleen Coulborn Faller, *Interviewing Children About Sexual Abuse: Controversies and Best Practices* (2007) at 193-94 (citations omitted). Others "have declared that there is an atmosphere of hysteria about allegations of sexual abuse . . . and have compared this to the Salem witch trials," but "[n]o data . . . are provided to support these assertions." *Id.* at 194 (citations omitted).

expected if it were simply the case that unsubstantiated cases were false." Tisha R. Wiley, *Legal and Social Service Responses to Child Sexual Abuse: A Primer and Discussion of Relevant Research*, 18 Journal of Child Sexual Abuse 267, 282 (2009) (citing Brett Drake, Melissa Johnson-Reid, Ineke Way, and Sulki Chung, *Substantiation and Recidivism*, 8 Child Maltreatment 248 (2003); Brett Drake, *Unraveling "Unsubstantiated,"* 1 Child Maltreatment 261 (1996)); *see also* Patricia Kohl, Melissa Johnson-Reid, and Brett Drake, *Time to Leave Substantiation Behind: Findings from a National Probability Study*, 14 Child Maltreatment 17 (finding risk of recidivism similar regardless of substantiation status of the index investigation).

An unknown proportion of "unsubstantiated" investigations are therefore "false negative" outcomes (meaning that maltreatment occurred but went undetected). Many of these false negative CPS investigative outcomes result from the fact that child-abuse investigations, by nature, present a minefield of intrinsic obstacles that CPS investigators (with or without the participation of law enforcement) must overcome, notwithstanding any additional layer of Fourth Amendment protections afforded to the abusers or their child victims. Because the Ninth Circuit failed to understand these complexities, it erred in holding that Petitioners violated the Fourth Amendment when they interviewed a suspected child-abuse victim without prior judicial authorization, parental consent, or exigent circumstances. It also failed to

recognize the gravity of the States' interest in ensuring that their investigative methods – specifically, child interviews – are as likely as possible to succeed in both unearthing child abuse and preventing the infliction of investigation-related trauma on the abused children that States most need to protect.

First among the dynamics involved, "[t]here are typically no witnesses to the abuse other than the child victim. . . ." Jennifer M. Collins, *Lady Madonna, Children at Your Feet: The Criminal Justice System's Romanticization of the Parent-Child Relationship*, 93 IOWA L. REV. 131, 151 (2007). Likewise, in child sexual abuse cases, "physical evidence is often nonexistent or inconclusive." Wiley, *supra*, at 275. For these reasons, "[i]nterviewing child victims is a crucial aspect of investigations. . . ." *Id.*

Second, the child often has a close relationship to his or her abuser, as does the co-offending or nonoffending parent in many cases. According to the *Child Maltreatment Report for 2008*, 81.2% of the victims were maltreated by a parent.[5] Stepparents inflicted the abuse in 4.4% of the cases, parents' unmarried partners inflicted the abuse in another

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[5] *See* http://www.acf.hhs.gov/programs/cb/pubs/cm08/figure3_6.htm (Figure 3-6, Victims by Perpetrator Relationship, 2008) (viewed December 14, 2010); *see also* http://www.acf.hhs.gov/programs/cb/pubs/cm08/chapter3.htm (reflecting that approximately 39% of the victims were maltreated by their mother, 18% by their father, and 18% by both parents) (viewed December 14, 2010).

4.4% of the cases, and other relatives inflicted the abuse in 6.5% of the cases.[6] It is therefore likely that many of the perpetrators also lived in the child's household. Like other forms of maltreatment in CPS cases, "[c]hild sexual abuse remains, in the overwhelming majority of cases, a crime perpetrated by members of the child's family and circle of trust." Ruby Andrew, *Child Sexual Abuse and the State: Applying Critical Outsider Methodologies to Legislative Policymaking*, 39 U.C. DAVIS L. REV. 1851, 1853 (2006).

Third, not only are child sexual abusers likely to be close to the child, but they "may have engaged in a range of strategies to prevent children from disclosing sexual abuse." Faller, *supra* note 4, at 175. In other words, abusers – most often the child's parent or parents, who have ready access to the child – may actively foster the potential for false negative investigation outcomes. By contrast, professionals who interview children about sexual abuse "are usually strangers to the children they interview," and will often employ an interview protocol designed to avoid "false-positives" (*e.g.*, asking open-ended questions to counter any suggestibility of the child). *Id.*

Finally and consequently, intrafamilial relationship dynamics profoundly, and negatively, affect the likelihood that CPS investigations will discover "sufficient

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[6] *See* http://www.acf.hhs.gov/programs/cb/pubs/cm08/chapter5.htm (viewed December 14, 2010).

evidence" of child abuse to allow for substantiation. Virtually by definition, CPS investigations most often involve the child's parents or parent figures. But research suggests that the likelihood of a child disclosing abuse drops considerably when the abuser is a parent figure or when a nonoffending parent is unsupportive of the child. *See* Faller, *supra* note 4, at 189. Faller's comprehensive review of research on child sexual-abuse interviews "supports a conclusion that there are substantial numbers of false negatives or disclosure failures in cases of actual sexual abuse," particularly in "cases of children abused by someone close to them and cases in which children's caretakers are unsupportive." *Id.* Cases of this nature "seem to result in a very high number of disclosure failures." *Id.*

Notwithstanding traditional legal presumptions about parents' tendencies to act in their children's best interests, *see Parham v. J.R.*, 442 U.S. 584, 602 (1979), empirical data show that the presence of a supportive or protective caretaker cannot reasonably be presumed in the context of intrafamilial child sexual abuse and, by extension, neither can the likelihood of the child's disclosure. For example, in a study of 435 biological, nonoffending mothers of children involved with CPS who were victims of sexual abuse perpetrated by a parent, relative, or household or family member, nearly one-third (30.8%) neither believed nor protected their children. Denise Pintello and Susan Zuravin, *Intrafamilial Child Sexual Abuse: Predictors of Postdisclosure Maternal*

Belief and Protective Action, 6 Child Maltreatment 344, 347-48 (2001). In fact, only 41.8% of the mothers believed their children's disclosures and took protective action. *Id.* And the remaining 27.3% of the mothers had "ambivalent" reactions, meaning they either believed that abuse had occurred but did not protect their children or took protective action despite their disbelief. *Id.* at 348. In sum, as many as 44.1% of mothers did not take protective action. *Id.* at 347-48.

Moreover, mothers' relationships to the abusers influenced the likelihood that they would believe and protect their children. More than half of the mothers were in a current sexual relationship with the offender, *id.* at 346, but those who were not in such relationships were 4.3 times more likely to believe and protect their sexually abused children, *id.* at 348.

The chilling effect of a nonoffending parent's disbelief or unsupportiveness tends to survive even in the presence of compelling medical evidence of abuse. *See* Lindsay C. Malloy and Thomas D. Lyon, *Caregiver Support and Child Sexual Abuse: Why Does It Matter?*, 15 Journal of Child Sexual Abuse (Issue No. 4) 97, 98 (2006) (discussing a study in which children presenting a sexually transmitted disease in the absence of prior suspicions of abuse failed to disclose at dramatically different rates when children had supportive [37%] versus nonsupportive caregivers [83%]). "Many children, if they disclose at all, will disclose to their mothers," but "[n]onsupportive caregivers . . . are unlikely to report the abuse to social services [and] (even supportive caregivers may

have reasons not to notify the authorities)."[7] *Id.* at 99. These so-called "dead-end" disclosures may further reduce, preclude, or delay the likelihood of disclosure. *Id.*

But perhaps most significantly, even if a caregiver reports the abuse, the caregiver's unsupportiveness nevertheless "may lead the child to fail to disclose the abuse when questioned by CPS. *This would likely prevent substantiation and intervention, because social workers primarily rely on a disclosure from the child to substantiate abuse.*" *Id.* (emphasis added).

The presence of an abusive parent, not surprisingly, also correlates with lower disclosure rates among physically and sexually abused children. For example, in a review of more than 26,000 forensic interviews conducted for physical and sexual abuse, almost *two-thirds* of the alleged offenders were parent figures, yet disclosure of abuse occurred in only 20.9% of cases involving parent figures, compared to 89.3% of nonparent cases. *See* Faller, *supra* note 4, at 54.

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[7] Many factors influence maternal belief or supportiveness following disclosure of sexual abuse, including intimacy, financial dependence, or cohabitation with the offender; the mother's own history of abuse; the victim's age (younger children are more likely to be believed); and the victim's gender. *See* Ann N. Elliot and Connie N. Carnes, *Reactions of Nonoffending Parents to Sexual Abuse of Their Child: A Review of the Literature*, 6 Child Maltreatment 314, 317-19 (2001).

Given these known barriers to children's disclosure of intrafamilial sexual abuse, an inherent methodology limitation of the related research (only those cases that come to professional attention can be studied) suggests that countless other abused children go wholly unidentified. Faller, *supra* note 4, at 189. "[T]he findings regarding disclosure failures probably represent an underidentification of the problem of children who do not tell." *Id.* "Indeed, many people who are abused never disclose their abuse or only do so as adults." Wiley, *supra*, at 275 (citations omitted). "Children may also blame themselves or feel guilty for their abuse." *Id.* (citations omitted). Even for many children who do tell, "disclosure is a process, which may involve initial denial of abuse and later retraction." Faller, *supra* note 4, at 189.

Against these many hurdles, it is often "the responsibility of child welfare professionals to obtain children's stories through forensic interviewing." Wiley, *supra*, at 275. What this means, of course, is that the children most likely in need of CPS intervention – that is, children who are abused by parent figures and whose nonoffending parents, if any, are unsupportive or not protective – may very well be those least likely to disclose their abuse to anyone, let alone disclose it in a single, brief encounter with a CPS investigator. Such children might very well end up on the rosters of "unsubstantiated" reports – and unprotected children. In one study, as many as 60% of children who made "dead-end" disclosures to a parent

reported that the abuse reoccurred. Malloy, *supra*, at 100.

Accordingly, States have a compelling interest in "getting children to disclose enough information about actual abuse to support a successful investigation and protect children." Wiley, *supra*, at 277 (citations omitted). Best practices guidelines for doing so vary to a degree, but generally advise that the interview should take place in a neutral setting and that the interview be phased, allowing sufficient time for rapport building, information gathering, and closure. *See* Faller, *supra* note 4, at 66-89 (for an overview of interview structure, protocol, and guidelines); Danielle Laraque, Amy DeMattia, and Christine Low, *Forensic Child Abuse Evaluation: A Review*, 73 Mount Sinai Journal of Medicine, 1138, 1142 (2006). Interview structures "are designed to avoid interviewers eliciting false positives, which appear to be a lesser problem than false negatives." Faller, *supra* note 4, at 88. For example, use of rapport building has been shown to increase children's accuracy in event recollection. *Id.* at 72.

Child interviews have come to be widely recognized as "the most viable and valuable source of information about the likelihood of sexual abuse." *Id.* at 35. Contrary to fears that families experience these investigations as socially stigmatizing or embarrassing, *Greene*, 588 F.3d at 1016, a recent study of nonoffending caregiver and youth experiences with child sexual abuse investigations found that both groups were mostly satisfied with their experiences

during the investigative process. *See* Lisa M. Jones, Kathryn E. Atoro, and Wendy A. Walsh, *Nonoffending Caregiver and Youth Experiences with Child Sexual Abuse Investigations*, 25 Journal of Interpersonal Violence 291 (2010). In fact, the chief complaint among nonoffending caregivers was "the feeling that compared to what they had expected, cases were not being pursued effectively or *vigorously enough* by investigators." *Id.* at 307 (emphasis added). Such findings hardly comport with the notion that government widely engages in unreasonable investigative practices in this context.

In sum, States have an imperative interest in ensuring their ability both to interview children whom they reasonably suspect are victims of abuse and to conduct those interviews in a manner that maximizes the likelihood of "actual abuse" disclosures, while minimizing investigation-related trauma and preventing false accusations. Cooperative, or multidisciplinary, investigations are the best available means to that end.

B. The States Have a Compelling Interest in Using Multidisciplinary Teams to Investigate Child-Abuse Reports to Minimize Further Trauma to Victims and Maximize the Reliability of Investigation Outcomes.

States have recognized that the best way to achieve safety for children and to minimize trauma to child victims is to require the state agencies charged

with investigating and prosecuting child abuse to cooperate. Child-abuse investigations necessarily implicate law enforcement issues.[8] Moreover, they are inherently difficult for the children and the families involved. Many States therefore encourage or require cooperation between child-welfare agencies and law enforcement departments because as the Ninth Circuit acknowledged, "[i]t may well be that fostering coordination and collaboration between caseworkers and law enforcement officers is an effective way both to protect children and to arrest and prosecute child abusers - each, of course, governmental activity of the highest importance." *Greene*, 588 F.3d at 1029. Indeed, "[s]ome of the measures which seem to have the greatest impact on lowering instances of child sexual abuse are joint protocols with law enforcement and forensic evaluations – teams with individuals from various fields. . . ." Linda Spears, "The Role of the Child Welfare League of America," in *Preventing Child Sexual Abuse: A National Resource Directory and Handbook* (2005).

Nevertheless, the Ninth Circuit found that law enforcement's direct involvement in the *Greene* investigation necessitated the application of "'the general law of search warrants.'" *Greene*, 588 F.3d at 1030 (quoting *Calabretta*, 189 F.3d at 814). It did so even though the law enforcement officer merely observed

[8] All fifty States have laws criminalizing child abuse. *See* Brief of Amici States in Support of Petition for Certiorari (States' Cert. Amici Brief), n.11.

Camreta's interview of S.G. while simultaneously engaging in an ongoing investigation into criminal charges against S.G.'s father. *See id.* at 1017. What the Ninth Circuit failed to recognize, however, is that state agencies for protecting children and for prosecuting crimes against children are often required to collaborate under state law and under best-practices principles in both the social work and the law enforcement fields.

Beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, Pub. L. No. 93-247, 88 Stat. 4 (Jan. 31, 1974) (codified as amended at 42 U.S.C. §§ 5101 to 5119c), the federal government has demonstrated an interest in improving child-abuse prevention efforts, specifically by "creating and improving the use of [MDTs] and interagency protocols to enhance investigations," 42 U.S.C. § 5106a(a)(2)(A). States eligible for federal grants to support the development of these MDTs may lose those funds if they are unable to continue using information that was collaboratively collected in cases in which there was law enforcement involvement. *See* 42 U.S.C. § 5106a(b)(2)(A)(xi) (conditioning eligibility for funding under CAPTA on a State's submission of a plan that assures that a state law or program relating to child abuse and neglect includes "the cooperation of State law enforcement officials, courts of competent jurisdiction, and appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse or neglect").

The U.S. Department of Justice has similarly advocated for the use of MDTs "composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse." U.S. Dep't of Justice, *Attorney General Guidelines for Victim and Witness Assistance* (2005)[9] at 50. The purpose of these teams "is to maintain the credibility and reliability of the child's testimony as well as to monitor the child's safety and well-being throughout the case." *Id.* Multidisciplinary teams "shall be used when it is feasible to do so," with the goals of minimizing the number of interviews to which the child is subjected "to reduce the risk of suggestibility in the interviewing process," to provide services to the child, and to monitor the child's safety and well-being. *Id.* And, under federal law, victims of crimes have "[t]he right to be reasonably protected from the accused." 18 U.S.C. § 3771(a)(1). More specifically, child victims of crimes are specifically guaranteed the services of MDTs "when it is feasible to do so." 18 U.S.C. § 3509(g)(1).

Following CAPTA's enactment, the States quickly adopted joint-investigation protocols. Missouri identified several ways that joint-investigation protocols can benefit victims and state agencies: reducing the number of interviews for child victims, avoiding

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[9] Accessible at http://www.justice.gov/olp/pdf/ag_guidelines.pdf (viewed December 14, 2010).

duplication of efforts, enhancing the quality of evidence, smoothing transitions between investigation and intervention, facilitating direct communication between team members, improving team members' skills by "sharing different perspectives," enhancing efficiency, and expediting treatment. Mo. Dep't of Soc. Servs., *Child Welfare Manual*, sec. 2, ch. 4, subsec. 2 (2008).[10] Hawaii just revised its children's code during the 2010 legislative session, in part to bring it into compliance with CAPTA. *See* 2010 Haw. Sess. Laws Act 135 (S.B. 2716) (codified at Haw. Rev. Stat. §§ 587A-1 through -43); *Hearing on S.B. 2716 before Sen. Comm. on Human Servs.*, 25th Leg., Reg. Sess. (HI 2010) (testimony of the Department of the Attorney General 2/4/2010).[11]

That information gleaned from a cooperative investigation between CPS and law enforcement may ultimately be used to pursue criminal charges against an abuser should not negate the collaborative child-interview processes that many state statutes contemplate. For example, Arizona's Legislature required Arizona's Department of Economic Security to develop and implement protocols with law enforcement for

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[10] Accessible at http://dss.mo.gov/cd/info/cwmanual/section2/ch4/sec2ch4sub2.htm (viewed December 14, 2010).

[11] Notably, Hawaii also allows departmental representatives to "[i]nterview the child without the presence or prior approval of the child's family and temporarily assume protective custody of the child for the purpose of conducting the interview." Haw. Rev. Stat. § 587A-11(2).

investigating and sharing information regarding reports of abuse that implicate certain Arizona criminal statutes. Ariz. Rev. Stat. §§ 8-304(B), -801(2), -807(B), -817.

Oklahoma also requires multidisciplinary investigation of allegations of sexual abuse or serious physical abuse "when appropriate and possible," Okla. Stat. tit. 10A, § 1-2-105(B)(5), to "ensure coordination and cooperation between all agencies involved so as to increase the efficiency in handling such cases and to minimize the stress created for the allegedly abused child by the legal and investigatory process," Okla. Stat. tit. 10A, § 1-9-102. At least nineteen other States have similar statutes in effect that mandate or encourage collaboration between child welfare departments and law enforcement agencies investigating child-abuse allegations.[12]

These federal and state laws and policies are consistent with the recognition by experts in child-abuse investigations that best practices require the use of MDTs. The Children's Services division of American Humane conducted a comprehensive national study to evaluate the effectiveness of varying levels of cooperative child-abuse investigation practices. *See* Amy P. Winterfeld and Taina Sakagawa, *Investigation Models for Child Abuse and Neglect* –

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[12] *See* States' Cert. Amici Brief, n.13; N.H. Rev. Stat. Ann. § 169-C:38-a, Vt. Stat. Ann. tit. 33, § 4915(f).

Collaboration with Law Enforcement (2003).[13] The investigation revealed that "[a]cross sites, professional disciplines, and among all national representatives, a joint, collaborative approach to investigating child maltreatment by law enforcement and child protective services is seen as the preferred approach. . . ." *Id.* at 7.

The collaborative approach is seen as "a strength of the investigative process" because

> a. It minimizes the trauma to child-victims by reducing the number of times that they must reiterate their retelling of traumatic events.
>
> b. It reduces the trauma and intrusion of the investigative process for non-offending family members by avoiding the annoyance of having government personnel in the household on multiple occasions.
>
> c. The process itself helps to produce interagency collaboration by bringing together personnel from different agencies when the interview is conducted and for pre- and post-interview meetings.
>
> d. The development of common interview guidelines that specify how to conduct a child interview concerning sexual abuse is a strength.

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[13] Accessible at http://www.americanhumane.org/assets/docs/protecting-children/PC-investigation-models-child-abuse-neglect.pdf (viewed December 14, 2010).

Id. at 13 (internal quotes omitted); *see also* John Doris, Rosaleen Mazur, and Marney Thomas, *Training in Child Protective Services: A Commentary on the Amicus Brief of Bruck and Ceci*, 1 Psychol. Pub. Pol'y & L. 479, 487 (1995) (MDTs have been documented to "reduc[e] the number of interviews a child must undergo," "increase[] the number of perpetrators identified and the number of charges pressed," and increase "the provision of mental health and other services for the sexually abused child.") (citations omitted); Kee MacFarlane and Jill Waterman, *Sexual Abuse of Young Children* (1986) at 318 ("wherever possible, medical, psychological, and law enforcement evaluations should be coordinated and jointly conducted in one place in order to prevent duplication and minimize investigatory trauma to children").[14]

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[14] Many state laws and policies require cooperation and coordination between child welfare workers and law enforcement personnel precisely to "avoid a duplication of fact-finding efforts and multiple interviews," Minn. Stat. Ann. § 626.556, subd. 10(a), and to "consider the needs of the child victim and . . . do whatever is necessary to prevent psychological harm to the child victim," Cal. Penal Code § 11164(b). Many States also encourage that interviews be kept to a minimum or even specifically limit the number of times that state entities may interview a child-abuse victim to "minimize[] the trauma to the children and their non-offending family members" during investigations. N.Y. Soc. Serv. Law § 423-a(1), (2)(f). "[B]ecause abused children's resilience and defense mechanisms are not as strong as those of adults, children are more likely to suffer renewed episodes of PTSD when questioned about the abuse," making it imperative to limit the situations in which the child is expected to re-live the abuse. William Wesley Patton, *Revictimizing*

(Continued on following page)

States have also mandated that anyone responsible for conducting the interviews possess specialized training to maximize the effectiveness of the interview while minimizing the trauma to the child.[15] Consequently, law enforcement personnel may delegate responsibility for child-victim interviews to trained social workers, while observing the interviews in order to comply with their mandate to investigate and ultimately prosecute child abuse. *See* Doris, *supra*, at 485 (noting that CPS agencies may have necessary investigatory resources that are not available to law enforcement agencies). Finally, the use of MDTs can help eliminate bias in investigating and prosecuting child-abuse and neglect cases due to increased accountability to team members. Tomiko D. Mackey, *Child Abuse: Victim's Race and Prosecution, Is There a Correlation?*, 26 Hamline J. Pub. L. & Pol'y 131, 138 (2006).

Child Abuse Victims: An Empirical Rebuttal to the Open Juvenile Dependency Court Reform Movement (2005) at 315.

[15] *See* States' Cert. Amici Brief, 21-22.

C. Requiring a Warrant, Court Order, Parental Consent, or Exigent Circumstances Before Allowing a Multidisciplinary Team to Interview a Suspected Child-Abuse Victim Undermines the States' Compelling Interests in Detecting and Preventing Child Abuse.

1. Because initial child-abuse reports are often hearsay statements that will not support probable cause, requiring investigators to obtain prior judicial authorization before interviewing alleged child-abuse victims would seriously impede their investigations.

Generally, obtaining a warrant or a court order to authorize an interview of a child requires the entity seeking the warrant or the court order to demonstrate that there is probable cause to believe that the child has been or will be subjected to abuse or neglect. *See* U.S. Const. amend. IV. Demonstrating that probable cause exists is particularly difficult in child-abuse situations because often only the abuser and the victim know about the offense. *See Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) ("Child abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim."); *accord* Collins, *supra*, at 151. For the same reason, investigative agencies are often unable to determine the validity of an initial abuse report until they interview the alleged child victim. *See R.S. v. State*, 459 N.W.2d 680, 686 (Minn. 1990)

(acknowledging the State's argument that "[b]ecause so often only the child victim and perpetrator have actual specific knowledge of the abuse, . . . the assessment interview is the best means of assessing the truth or falsity of a report of abuse").[16] The prohibition against basing probable cause on untested hearsay statements, such as those that often form the basis for initial child-abuse investigations, exacerbates this conundrum. *See Wong Sun v. United States*, 371 U.S. 471, 479-80 (1963) (stating that untested informant information is insufficient to support probable cause).

Many States do have some procedure for obtaining prior judicial authorization to conduct a search or seizure incident to a child-abuse investigation.[17] However, States have also recognized the difficulties inherent in such procedures. Alabama's courts have noted that requiring CPS to obtain a court order before conducting an interview sometimes "impedes the intent of the child abuse statute and in emergency instances may render it inoperable and

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[16] The interview of the victim is "the most critical factor in establishing whether or not sexual abuse or exploitation has occurred." Marcia Herman-Giddens and Thomas E. Frothingham, *Prepubertal Female Genitalia: Examination for Evidence of Sexual Abuse*, 80 Pediatrics 203, 208 (1987), given that there is physical or laboratory evidence of sexual abuse in only 10 to 50 percent of cases, John E.B. Myers, *Evidence in Child Abuse and Neglect Cases*, vol. 1, at 268 n.243 (2nd ed. 1992).

[17] *See* States' Cert. Amici Brief, n.4.

ineffective." *Decatur City Bd. of Educ. v. Aycock*, 562 So. 2d 1331, 1335 (Ala. App. 1990). And when the investigation itself may result in criminal proceedings or in the removal of the child, establishing the probable cause necessary to obtain a court order may be difficult if the only source of information regarding the abuse or neglect allegations is the "unsworn hearsay" of a child-abuse hotline report. *H.R. v. State Dep't of Human Res.*, 612 So. 2d 477, 479-80 (Ala. Civ. App. 1992).

Trying to determine whether probable cause exists to support an application for a warrant or court order based on nothing more than the initial child-abuse hotline report or a brief interview with the child increases the chances for error: either determining that there is insufficient evidence to support a warrant resulting in a child being left in a dangerous environment or engaging the court's resources in addition to CPS and law enforcement to undertake a full-blown investigation when none was necessary. *See* Caroline T. Trost, *Chilling Child Abuse Reporting: Rethinking the CAPTA Amendments*, 51 Vand. L. Rev. 183, 204 (1998) ("If a social worker must decide on the basis of a brief phone call or fifteen minute visit whether a report is true, the margin for error is bound to be fairly high.").

Recognizing the problems inherent in obtaining the information necessary to support further investigation of child-abuse claims, many of the same States that have a warrant or a court order procedure for child-abuse cases also permit interviews of children

without a warrant, a court order, or parental approval in certain circumstances.[18]

2. Given that the majority of child abusers are parents or other members of an abused child's household, requiring parental consent before interviewing a suspected victim may sabotage the goals of protecting children and prosecuting abusers.

As discussed above, within the population of abused children, the frequency with which children are abused by a parent or by another household member demonstrates why CPS and law enforcement personnel often have a compelling need to interview suspected abuse victims in a neutral setting away from and without notice to their parents or other household members. *See* Argument I.A, *supra*. Presuming that every parent of an abused child will always do what is necessary to protect that child is a dangerous fallacy:

> [O]ne reason we do not pay sufficient attention to the reality of violence against children in this country, that we struggle with holding some parents accountable for the harm they do to their children, is because of our tendency to romanticize the parent-child relationship. . . . [W]e continue to believe that love, not law, is sufficient to protect our

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[18] *See* States' Cert. Amici Brief, n.5.

> children, even in situations where love is clearly not enough. In other words, we engage in denial; we want to believe that parents will do the right thing by their children without the intervention of the criminal justice system.

Collins, 93 Iowa L. Rev. at 134.

In cases of maltreatment, the assumption – that parents and families will protect their children from harm – is belied by the frequency of intrafamilial sexual abuse and even infanticide.[19] Moreover, the "belief that parenting comes naturally is not only wrong, it endangers the welfare of children by preventing necessary interventions." Judith G. McMullen, *Privacy, Family Autonomy, and the Maltreated Child*, 75 MARQ. L. REV. 569, 592 (1992). "It is apparent that although parents may be in the best position to assess and act to further their children's best interests, there are no guarantees they will actually do either." *Id.* at 596. "[D]epending on their knowledge, experience, social supports, and environment, parents may not be able to accurately assess the best interests of their children." *Id.* Consequently, giving a parent – whether or not he or she is the

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[19] "Very conservative estimates of infanticide rates in the United States, for example, range from about three to thirteen abuse-related deaths per day, making abuse the leading cause of trauma death for young children – over auto accidents, accidental falls, choking on food, drowning, and the like." Owen D. Jones, *Evolutionary Analysis in Law: An Introduction and Application to Child Abuse*, 75 N.C. L. REV. 1117, 1172-73 (1997).

abuser – the power to prevent an interview of a child alleged to be the victim of the abuse further victimizes the child.

When, as in the present case, the alleged abuser is a member of the child's household, requiring a parent's consent to interview the child provides the parent with an opportunity to deliberately or inadvertently influence the child's statements regarding any abuse that may have occurred.[20] Even a parent who is not the alleged perpetrator will often have an emotional and/or a financial interest in maintaining an intact family unit. For example, there was some suggestion in the present case that removing the allegedly abusive father from the home would have caused the family financial hardship. *See Greene*, 588 F.3d at 1018.

> [F]amilies often are more supportive of the suspect than the child. For example, in summarizing the findings of a survey of 600 prosecutors, the American Bar Association reported that "[w]e were told time and time again that nonoffending parents (most often

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[20] *See* Timothy Ross, Francesca Levy, and Robert Hope, Vera Inst. of Justice, *Improving Responses to Allegations of Severe Child Abuse: Results from the Instant Response Team Program* (2004) at 1 ("The arrival of a child protective worker may cause a perpetrator to destroy evidence, influence responses from children, and otherwise hinder law enforcement investigations.") (Accessible at http://www.vera.org/download?file=135/responses%2Bto%2Ballegations%2Bof%2Bchild%2Babuse.pdf (viewed December 14, 2010)).

> mothers) are likely to pressure children to recant, citing economic hardships once the family bread-winner is removed from the home or jailed."

Collins, *supra*, at 153.

Giving parents and other household members the opportunity to taint the evidence that only the child victim can provide frustrates the objectives of both child protective services and law enforcement personnel:

> The purpose of an . . . interview outside the presence of parents, guardians, or other persons responsible for the care of the child is so that welfare officials and police officers may obtain an untainted interview. The reasons for interviewing without parental consent when a parent is the alleged abuser are obvious.

K.S., 459 N.W.2d at 687. Moreover, a "child's feelings of vulnerability and guilt and his or her unwillingness to come forward are particularly acute when the abuser is a parent." *Ritchie*, 480 U.S. at 60.

In the interest of protecting children and of obtaining untainted evidence of abuse, many States have codified the circumstances under which children suspected of being abuse victims may be interviewed without parental permission.[21] Regarding child-abuse

[21] *See* States' Cert. Amici Brief, n.8.

investigations in Indian country, Congress codified that when authorities have "reason to believe" that an Indian child has been subjected to abuse, investigating agencies "shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian." 25 U.S.C. § 3206(b).

3. If a child welfare agency can determine that an exigency exists before it interviews a child, it can take the child into temporary custody and interview the child.

A requirement of demonstrating that exigent circumstances justify interviewing a child at school in the absence of a warrant or parental consent is similarly problematic. The Ninth Circuit concluded that an exigency exists when "the caseworker has 'reasonable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant.'"[22] *Greene*, 588 F.3d at

[22] The Ninth Circuit concluded that Camreta's interview of S.G. three days after receipt of the report that she may have been the victim of abuse rendered the "exigent circumstances" exception inapplicable. *Greene*, 588 F.3d at 1030 n.17. The court failed to recognize, however, the staggering workloads under which most CPS caseworkers operate. According to the *Child Maltreatment Report for 2008*, CPS investigated approximately 1.5 million child-abuse referrals in fiscal year 2008, with an average response time between report and investigation of 3.3 days. *See* http://www.acf.hhs.gov/programs/cb/pubs/cm08/chapter2.htm (viewed December 14, 2010). With current economic conditions deteriorating rapidly, state resources for

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1030 n.17 (quoting *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1296 (9th Cir. 2007)). If the child welfare agent is able to determine before speaking with the child that the child will suffer harm before prior judicial authorization can be obtained, the State – either through the child welfare agency or law enforcement – can simply take temporary custody of the child and conduct the interview under the auspices of its custody.[23] Doing so, however, is a far greater intrusion into the family than simply interviewing the child. *See Darryl H. v. Coler*, 801 F.2d 893, 902 (Ill. 1986) (recognizing that "extensive interrogations" of families or "widespread inquiries of extra-familial sources" may inflict greater stigma than the initial intervention).

D. It Is Reasonable to Interview a Suspected Child-Abuse Victim at School.

By discouraging the use of at-school interviews, the Ninth Circuit has also affected the States' ability to effectively and safely interview suspected child-abuse victims in a familiar, neutral setting. Interviews of children at school are advisable for a number of reasons. First, children spend a significant amount of time there, making it reasonably certain that an

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investigating child-abuse and neglect reports are likewise evaporating. The time that elapses between a report and an investigation may therefore reflect a lack of resources rather than a determination that no exigent circumstances exist.

[23] *See* States' Cert. Amici Brief, n.10.

investigator can locate the child quickly. *See* Elena Silva, Education Sector Reports, *On the Clock: Rethinking the Way Schools Use Time* (2007) at 2 (noting that children spend on average 6.5 hours per day at school for 180 days out of the year).[24] Second, the child's school hours will often correspond to the working hours for many mandatory reporters and CPS and law enforcement investigators. Third, a child's abuser is not likely to be present at the school. *See* Argument I.A, *supra* (noting that most abusers are parents or other household members); *see also* Charol Shakeshaft, "Educator Sexual Abuse," *Hofstra Horizons* (Spring 2003) at 11 (noting that only a "small percentage" of educators abuse children). An in-school interview therefore takes place away from the site of the abuse and outside the perpetrator's presence.

Finally, and most importantly, a school is a familiar environment at which the child is likely to feel safe and more relaxed than at a police station or CPS office. The need for a safe environment in which to disclose abuse is "critically important to abused children who have lost a sense of control over their world and who have internalized the betrayal, powerlessness, and stigma often associated with inappropriately disclosed child abuse." Patton, *supra* note 14, at 315. States have also recognized the importance of

[24] Accessible at http://www.educationsector.org/sites/default/files/publications/OntheClock.pdf (viewed December 14, 2010)

interviewing children in a safe place by explicitly authorizing interviewing children at school. *See, e.g.*, 88 Op. Att'y Gen. 84 (Ariz. 1988) ("In some cases CPS cannot adequately investigate and determine whether custody of a child is necessary without obtaining information from the child, preferably in a neutral and non-threatening environment such as a school"); *see also* Cal. Penal Code § 11174.3; N.H. Rev. Stat. Ann. § 169-C:38, IV; N.D. Cent. Code Ann. §§ 50-25.1-05(2)(c), -05.05; Okla. Stat. tit. 10A, § 1-2-105(B)(1); Wash. Rev. Code Ann. § 26.44.030(12)(a); 89 Op. Att'y Gen. 49 (Utah 1990); *see also* Mo. Dep't of Soc. Servs., *Guidelines for Mandated Reporters of Child Abuse and Neglect* at 26.[25]

[25] Accessible at http://www.dss.mo.gov/cd/pdf/guidelines_can_reports.pdf (viewed December 14, 2010).

CONCLUSION

For the foregoing reasons, this Court should reverse the portion of the Ninth Circuit's judgment that holds that Petitioners violated the Fourth Amendment.

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